

Intro:

This is Michael Cowen, and welcome to Trial Lawyer Nation. You need to show people the worst possible harm that that negligence could have caused, because that's what the case is about- What I'm asking you to do is to focus on what you can control, because that's where the power lies- The Dalai Lama has a saying that in the face of anger, justice evaporates- If you can't focus group it, you have to be very, very critical of your process- If the facts aren't good, you can't create a miracle- We can agree to disagree and be zealous advocates for our clients- Quit worrying about looking perfect. You're not going to. That'll come in time, but you can still be an effective litigator- Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm. And now, here's your host, noteworthy author, sought-after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, we've got Rich Newsome, a great lawyer from Orlando, Florida, someone I've known for a long time. How you doing today, Rich?

Richard Newsome:

Good, my friend. Great to see you.

Michael Cowen:

Well, thank you for joining us. It's always good. My biggest criteria for selecting guests for Trial Lawyer Nation is a selfish one. I'm like, "Who do I want to learn from? What guests can I have that are going to better my practice?" And some of the stuff you're doing is really exciting. And I've had a chance to talk to you about it some, but I really want to talk about it more, and I'm really excited to have you on. So, tell me a little bit about yourself.

Richard Newsome:

Well, I'm a Florida native. I went to a FSU undergrad and Florida law school, which makes me a schizophrenic. But at least now with my Noles losing, I can have some solace in the Gator's victories. But I mean, I went to law school, was a federal prosecutor with the U.S. Attorney's Office, then rolled out, it was a big civil defense firm representing product manufacturers in catastrophic cases. We were the ... It was with a guy that Ford Motor Company would parachute in on some of the bigger cases. And then eventually, had enough of that and left. And I'd been doing plaintiffs' work for the last 25 years.

Michael Cowen:

And doing it pretty well. You've had a lot of big verdicts, a lot of big settlements. You've also started something. I want to go into the details later, but something called Trial School. Just to tease us, what is Trial School?

Richard Newsome:

Yeah, so Trial School is a collaboration of a group of lawyers, really good lawyers across the country, to share method. And it started out, really, as a laboratory on voir dire, and then it grew from there and trying to explore ... We found there was all these little bits and pieces of beautiful method that could be combined into maybe forming a better way of trying cases. And so that was the genesis, and now it's

this giant online platform. We have a really good community of lawyers, both faculty and members, to collaborate and try to make each other better for trying cases.

Michael Cowen:

That's awesome, and I so appreciate you doing that, too. But before we into that, I want to talk a little bit about your background and some of your successes and struggles that led to this. So first of all, you said you started off with the U.S. Attorney's Office. You started off at a defense firm. It's kind of the traditional path. When you go to law school, it feels like there's this pressure that, oh, success is working with the corporate world, working with the government, and we're kind of pariahs in the plaintiffs' world, almost like, "Oh, those are for the C students."

Richard Newsome:

Right.

Michael Cowen:

And what caused you to switch sides?

Richard Newsome:

Well, I was with this great firm and they had some really wonderful resources. And I was representing a manufacturer in a case where a family had lost a two-year-old. It was an alleged defective seat belt case. And I was taking the deposition of the family. And my wife, meanwhile, was pregnant with our first child. We were trying to build a house. We had student loans. And I'm taking this family, and I just felt ... I mean, there was a good lawyer on the other side, but we were completely outgunning him, due to resources. And here I am representing Ford. I just felt ... I mean, it was horrible. The family was crying. I was trying to hold back tears, and it was just awful. I called my wife on the way home. I said, "I can't do this anymore."

Richard Newsome:

So to her credit, we were in debt with student loans and she said, "Okay." And I took a huge cut in pay and left the big defense firm and joined a small practitioner and just started knocking on doors and saying, "Hey, let me sue these car companies, let me sue these tire companies and represent people."

Michael Cowen:

And is that where you started, was in the product world?

Richard Newsome:

Yeah, I mean, so that's what I knew. I knew products at that point. And so started knocking on doors of other friends who were plaintiff lawyers. I didn't know a lot at the time ... Which actually, John Morgan was one of the first guys that said, "Hey, man. Look, why don't you handle our product cases?" And he was a good friend to me in helping me get started. But that's been my ... For the last 20 years, I was mainly working with other plaintiff firms to co-counsel cases where they have a defective product case, sometimes in tandem with another. But yeah, so it's been rewarding for me to get to know the community. And my entire business model's built on working with not just other lawyers, but other plaintiff lawyers. I love the community, and so it's really been a rewarding experience, both to represent the clients and to work with my friends.

Michael Cowen:

Yeah, it is fun when you get to go counsel with other lawyers. Now, the product world, it's hard and easy to get into. I used to do a lot of product work. On the one hand, it's easier to get people to give you cases that costs hundreds of thousands of dollars to do, and where if you do a perfect job, you still probably have no more than a 50/50 percent chance of winning at trial, because it's easier to blame a driver than it is to blame a car.

Richard Newsome:

Right.

Michael Cowen:

But on the other hand, the learning curve and the costs to work up a case are so high. How did you get there? How did you get there financially to be able to fund these cases? How did you get there to discern what's a good case and what's not?

Richard Newsome:

Yeah, so because I jumped to the plaintiff side and joined this other guy ... This is the mid-'90s, and this is an old school plaintiff lawyer who'd been very, very successful. Guy's name was John Urbichuck; had a wonderful reputation, was involved in the AIEG. I was attracted to him. He had done a lot of the early Bronco II litigation and a lot of the Jeep litigation. So he had obviously been very, very successful. And so I started really with his help and started trying cases with him and got plugged in. The auto manufacturers say ... I remember when I was on the defense side, "Oh, he's plugged in," or, "He's not plugged in."

Richard Newsome:

It was, "What does that mean?" There's a group of product liability plaintiff lawyers across the country, sort of within and surrounding this group called the AIEG, which is the most amazing group of lawyers. They all share information freely and made it where a young lawyer like me can come in and get up to speed. They share experts, they share information. So that was really what it was, partnering with an older lawyer who wanted to bring me in and also getting plugged into other plaintiff lawyers. My entire practice, both co-counsel and working, has been through ... And I think that's how you and I got to know each other years ago.

Michael Cowen:

Yeah, that's true.

Richard Newsome:

We met by this wonderful network of lawyers across the country that work together to help each other with their cases. So, that's how I did it.

Michael Cowen:

And it is such an incredible network. And anyone that's thinking about doing a product case should join AIEG.

Richard Newsome:

Absolutely. Yeah. And I'll say this, that if you don't join AIEG and you're doing an auto product case, even any product case, it's borderline malpractice. The other thing, too, and I would hugely emphasize this if I could make one point today, any young lawyer who wants to get into product liability can do it because the community of lawyers who do ... I mean, got great lawyers like Don Slavik, great lawyers like Jim Gilbert, and Rob Palmer, Chris Spagnoli, have really made it where you can plug in. They will share with you freely. As long as you're willing to put in the elbow grease, you can do these cases.

Michael Cowen:

Yeah, I remember my first seatback defect case, I was able to send a request for production saying to General Motors, "I want this document by name. I want this document by name that was authored by this person on this date." And one, it lets them know from the beginning, this person has done their homework. But two, you saved countless hours and heartache trying to sort through what's there, you know. I've had people say, "Oh, it's so expensive to join the AIEG. It's like \$2,000." Well, just the money you save not hiring an expert you don't need or not having to do all this extra work, it pays for itself very quickly.

Michael Cowen:

But what really shocked me in that, when I was up and coming and trying to get in the product world, I had an F-150 rollover case. Mikal Watts, who lived two hours away from me, he practiced in the same community, honestly, going after the same referral lawyers, had tried and won an F-150 rollover case; same platform, it was the same kind of model year, the same basic vehicle. And so I call him and he just has his office pull out the file, lets me go through and copy all the best exhibits, get the trial transcript. Doesn't charge me a dime. Doesn't ask for anything; just incredible. Whereas a lot of people in other industries would say, "Well, I want to shut out the competition," whereas there's such an abundance mentality, there's plenty of work for everybody, let's help each other.

Michael Cowen:

It's a great way. And I think that's really, when we get into the Trial School stuff, carried over into what you're doing with the Trial School, with Joe Fried, who also came from that product world is doing, and Michael Leizerman are doing with the ATAA in the trucking world. It's just such a great time to be a plaintiffs' lawyer because that spirit of helping each other is really spreading, whereas when you and I started, outside of the product world, that spirit wasn't always present.

Richard Newsome:

You're right. You're absolutely right. Yeah, I really think that AIEG did a lot, at least for those of us ... Guys like Joe Fried, you, Mikal Watts. Mikal did the same thing with me when I had just jumped over. Tab Turner did, too. These guys opened up their doors, and the same experience as you. It's actually how I met Cal Conley. We actually met at Watts's office going through his documents back in the Firestone days. And Mikal Watts could not have been more generous, so.

Michael Cowen:

Now, the one that I wish I had done, if I wanted to get in the product field, in retrospect, was working for a lawyer that had the capital and had the experience because trying to make enough money to fund a product case, and then we'd ... I remember I had a partnership break up because I was just getting into products and we had settled our first two seven-figure cases. And we didn't take a distribution as partners because all the money was going to fund the other cases and, frankly, to get out of the debt

and past-due bills that we had accumulated working up to the other cases. And it was always, like, "Can we settle something in time for my expert disclosures on this other case?" It was scary, and in retrospect ... And actually, that's when my practice took off, because when that partnership broke up, I couldn't do the buyout and fund my cases. So I went to work for a guy named Rob Ammons, who's a great lawyer in Houston.

Richard Newsome:

Whoa. That's right.

Michael Cowen:

for a couple years, and-

Richard Newsome:

He did a lot of products with Ammons. He's one of the greats.

Michael Cowen:

Yeah, and that was really what the ... Financially, that was a huge turning point for me. I mean, being able to get out of the hole and then learning from someone who ran a successful practice, "Okay, this is how you pick cases. This is how you can work with your experts in a way that it leaves you some monies and your clients some money left at the end of the day."

Richard Newsome:

That's right.

Michael Cowen:

I learned so much working with him.

Richard Newsome:

Well, and the other advantage of working with an experienced lawyer ... And this goes for any practice, especially a niche practice like medical malpractice or product liability or mass torts, whatever it is, but it's in case selection, knowing which case to get into. If you're a mass tort, knowing which projects to take a pass on. And with products, I think that was maybe the most valuable lesson my mentor taught me was ... As he once said, and this was a guy named John Overchuck, he said that, "We make more money as plaintiff lawyers in the cases we turn down than the ones we take." And I think with product liability, that's so much of it, is knowing which ones to turn down.

Michael Cowen:

Yeah. I started off representing ... I took some cases where the man who died was driving, was intoxicated, was not wearing a seat belt. And frankly, I'm lucky that I escaped without a bankruptcy; a personal bankruptcy, I mean.

Richard Newsome:

That which does not kill us makes us stronger. You take credit in your own brain for your wins, but boy, you really learn from your losses. And I couldn't agree with that more.

Michael Cowen:

Yeah, although I'm kind of tired of learning at this point, but-

Richard Newsome:

Yeah. Unfortunately, though, I still keep getting the hard lessons, it seems sometimes.

Michael Cowen:

It happens. So for those people that are going to thinking about doing product cases, what is it in your mind that makes a good product case?

Richard Newsome:

Yeah. So at the end of the day, because as you said, Michael, these things are really expensive. And I think you can't really try a product case for less than half a million dollars today, especially if it's getting into an airbag case, for example, or a seat belt case or something that ... God forbid it's a autonomous vehicle issue or something in the electronics, it's a million dollars or more. We had right around a million bucks, the last one we tried before COVID. And it's just enough to make you want to vomit if you stop and think about it.

Richard Newsome:

So, number one, because of the costs, you have to have a catastrophic injury. If the client ... I remember a friend of mine who's a plaintiff lawyer, who's a little, you know, put this right out there, he said, "Look, we can't take your case if the client is walking and talking." So you have to really have a wrongful death case. You have to have serious injury, a paralysis, brain injury, loss of a limb, to justify it because otherwise the damages won't be ... You win a verdict, and it's just not enough to offset the cost. So that's number one.

Richard Newsome:

And then I think number two, it has to ... Even though some jurisdictions no longer have the consumer expectations test, for years, that was the jurisprudence of the country when it came to defective products. It's that the definition of strict liability or a defect is when a product fails to act or perform in the manner that an ordinary consumer would expect. We still have that. I think Texas may still have it. Some other case state-

Michael Cowen:

No, we're Safe Alternative Design in Texas. Yeah.

Richard Newsome:

You are? Okay. Well, but even if it may not be the standard in a lot of states, post-tort reform or post-jurisprudence judges making bad ... conservative judges making bad decisions, it still comes down to that same idea, is that if you look at a fact pattern ... I always say, "Take the pictures of a crash," if it's an auto case, for example, or a crash witness in this case, and show that to a group of lay people that will be on the jury and you ask, "Hey, do you think someone should have been seriously hurt or killed in this crash?"

Richard Newsome:

And if they say no, then that's a product case. Or take a fact pattern and say, "Look, here's what happened. Being objective, do you think this product should have performed in the way it did or not performed in the way it did?" And if the answer is that, "Yes, that product shouldn't have done that or should have protected," that's the case. It's, at its very fundamental level, a commonsense analysis, does this fact pattern rub me the wrong way? And if so, did it then cause a catastrophic injury? That's the core, to me, or a product liability case.

Michael Cowen:

Yeah, I think some of the hard things for some of the cases I picked when I was doing products is I didn't have a good, compared to what? And sometimes you don't. Let's say when we were early ... like in the mid-'90s in roof crush litigation, it was horrible. They were making these weak roofs. Vehicles would roll over, paralyze people, kill people, and needlessly. But nobody was making a good roof.

Richard Newsome:

That's right.

Michael Cowen:

And so until the Volvo XC90 came along and then the Subaru Forester and now lots of vehicles, you didn't have a good, compared to what? So it's like, if everyone is making it this way and you're saying the whole industry should change and every car that everyone's driving is defective ... Now, if you can get somebody over that hump, they get really mad and want to help themselves, but it's really ... from a defensive attribution standpoint, for the juror, it's really hard to get past.

Richard Newsome:

No, you're right. And some of the cases, you really have to stretch. I'm sure you did when you were doing a lot of product stuff, you get the odd ball case. And sometimes the answer to the puzzle, to answer that is this out of the box research that you have to do. We had a trailer swipe case years ago, and for the life of us, we couldn't figure out what happened. Then we finally figured out what happened, but turns out there was an alternative design.

Richard Newsome:

Now, we found it. It was some little tiny company up in Michigan. But yeah, I agree, I think that's part of the analysis. But even then, we were a community, some were winning roof crush cases back before the XC90, back when there were just a bunch of crappy roofs, coming back to this notion that if you get a low speed rollover where like, "Hey, I went off the side of the road for a good reason. I was dodging to avoid a kid and I went down a ditch and my vehicle rolled over and ended up on its roof." That's clearly foreseeable. So you can still win them, but, boy, it becomes easier when you get an alternative design.

Michael Cowen:

It is, and they're not impossible, but they're harder. And so to me, a good, compared to what?

Richard Newsome:

Right.

Michael Cowen:

When I'm looking now, like I recently had a trailer underride case, so saying that the underride guard on the back of the trailer wasn't strong enough, was our theory. 15 years ago when they were all crap, those were hard cases. Now that we have the ... The Institute for Highway Safety had done testing, and this particular company was an outlier. Most companies by ... I think it was the 2018, 2019, whatever the model year was, were making ones that would have prevented this crash. And we were able to do testing with a production vehicle, not something we had to create, and show that there would only be minor injuries instead of a catastrophic brain injury. And in this one, they had actually created one that passed the test, got an award for it, and then never told anybody about it or tried to sell it, so we uh-

Richard Newsome:

That's beautiful.

Michael Cowen:

They didn't let us try it, but we had a really fun case.

Richard Newsome:

Sometimes, too, there's other ways around it. Even if there's nothing in production, you can look at patents, sometimes, a lot of patent research. The other, I think, that's equally if maybe not the most compelling evidence in any product liability case are other similar incidences. We call them in AIEG speak, OSIs. And if you can show, for example, that there was some easy fix either with a patent or a recommendation ... That was the case we tried year and a half ago with the E-350. It was a van made by Ford Motor Company that had rolled over tons of times, killed a lot of people. They knew about it. They just decided to pay the claims, at least that was our theory at trial. And there was an alternative design that they just didn't do. And so sometimes by showing the number of times it's happened and knowledge by the company, and obviously it makes it foreseeable, you don't have to have ... Now, we did. We had some other production vehicles, but there are ways around it.

Richard Newsome:

Look, this whole area, make no mistake. It is fraught with minefields because you've got the best trial lawyers on the other side, on the defense side, coming in. They're going to be loaded to the teeth with ... They bring an army in the courtroom; six, seven lawyers. They usually take out a whole full ... You've been there ... the whole floor of the hotel room, and they're coming with the best experts in the country. And here we are basically trying to tell a car company how to build a better car. It's a little crazy, if you think about it.

Michael Cowen:

But it's so important because look at all the advances we have in automotive safety because of litigation. We have stronger roofs, airbags aren't killing children anymore, at least not that I know of, not like they were when they first came out.

Richard Newsome:

That's right.

Michael Cowen:

You know, electronic stability control was standard on those cars, even before the government made them put it standard on most cars. The seat belts are staying buckled more often during car crashes. I mean, just all kinds of great, great things. In fact, all the cases I learned how to do in the '90s aren't there anymore because they got tired of us suing them and they fixed the problems.

Richard Newsome:

It's so true. We had, when I started a couple of years into it ... This was back when the whole Ford Firestone thing and were flipping over, Chevys and Fords and Nissans. And we ended up having to get a warehouse here in central Florida just to store these evidence vehicles. And back then, the warehouse was literally filled to the brim with SUVs that had rolled over. Today, I mean, I think maybe we got a couple of van cases that are still rollovers, but it just doesn't happen anymore. And I really believe that's a testament to the work that the crash worthiness bar cross over the ... product liability bar across the country, the plaintiffs' bar, is responsible for. I really believe that. That whole electronic stability control technology, it's really miraculous, and it's the algorithm, as you know, that differentially fires the front and the rear tire, and it's tied into the ... It's miraculous and it's saved lives.

Michael Cowen:

Yeah. It's great. And sometimes the most satisfying thing is the person that never met you and never knew that you did it, the life you saved that they'll never know.

Richard Newsome:

That's right.

Michael Cowen:

But-

Richard Newsome:

But what we see it in the data, which is cool, and the fact that I know anecdotally vehicles don't flip over. And maybe the industry would have done it anyway, but there sure was a financial hammer by a lot of great lawyers getting big verdicts in rollover cases to make sure it happened.

Michael Cowen:

And I don't believe they would have done it without a ... They just aren't going to dedicate the time and money to improving design if they don't have a reason to do it.

Richard Newsome:

Well, I think you're probably right.

Michael Cowen:

Yeah, because consumers, no one thinks they're going to get in the wreck. And so they're not really thinking about it as much. There's some, but I mean, and on the advanced stuff, like I said, if everyone's making the same roof and the consumer doesn't have a choice, then what are they going to do?

Richard Newsome:

Well, not only that, but look at the litigation that's resulted in the light being turned on that that has revealed some of the most important recalls in history. Look at Takata just recently. It was the result of a group of us that had state court cases that decided not to settle quickly and quietly like the manufacturers wanted to, that ended up bringing this thing to light. Bill Nelson heard about it, got involved with some of us that had clients, brought literally our ... It was Rob Ammons and my client. He brought us up to Washington and held Senate hearings and all of a sudden, boom, now we have the largest recall in history. Now I know for sure that the timing of that never would have happened, but for a very small group of state plaintiff product liability lawyers filing those airbag cases in state court.

Michael Cowen:

Yep. And you could argue it's against your financial interest to do that, because if you're just looking at it from a pure financial point, let's keep quietly settling these cases and keep the gravy train running, but that's not the right thing to do.

Richard Newsome:

Well, it, philosophically goes into this thing you and I were talking about, about trying cases, and the whole Trial School idea. I think one of the great tragedies is that more cases aren't brought to trial, especially important ones and good ones where there's a public policy. I mean, there's such a temptation in the light of the money that it's going to cost to try it, the fear of these great lawyers coming in and defeating you and losing, the fear of what's going to happen to your client. But if you've got a client who's on board, the difference between moving a case forward, getting the discovery, turning the light on, and getting a big verdict is just exponential in terms of the policy changes that can be affected by forcing corporations to change their behavior.

Richard Newsome:

And that applies not just to product liability, but mass torts and antitrust and class action. So I think, yes, it's a huge temptation, but when lawyers decide to buckle down and try a case, or at least get it ready and not capitulate, man, it makes all the difference. And we see that in case after case. I think over the last 20 years, it's resulted in not only safer products, but better behavior by corporations.

Commercial 1:

Each year, the law firm of Cowen | Rodriguez | Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case. And if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301, or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail. And now, back to the show.

Michael Cowen:

Yeah, and it's crazy. It really sucks to lose any case and it sucks even more when you have a lot of money invested in the case, but there's something liberating about ... and it takes a while to realize it. But I remember the first time I lost a case where I had \$100,000, which at the time, I had a house that cost

under \$200,000 and I owed money on it. So I guess the biggest investment I had in my whole life was that case that I had lost.

Richard Newsome:

Oh, it's brutal. There is nothing worse. I mean, look, obviously losing a loved one, but short of those types of issues, professionally, it is the most devastating, and-

Michael Cowen:

I respectfully disagree because I survived.

Richard Newsome:

Yeah, well you do. But when it happens, at least to me, it's not just your loss, the ego, it's money to the firm, the loss of profit, but this poor client. I think I was telling you about this case I lost up in the panhandle, but good God, it just killed me. It killed me.

Michael Cowen:

Now, that was the case. There was no real offer. The client wouldn't have gotten any money. And it was liberating, at the end of the day. It sucked when I went through it, but then when I'm going through trial the next time ... And of course you're getting scared, but then you also say, "Well, if I lose, I'm not going to die."

Richard Newsome:

Right. That's true.

Michael Cowen:

"I'm going to have another case. I'm going to have another trial." And realizing, I think that's part of the ... People get paralyzed with the fear of loss and they settle too cheap and they don't try cases they need to try. And I think that part of the survival practice of you go, you survive it. It really sucks. You don't want to do it again, so you work harder, but you also realize it's survivable. It's not going to kill me.

Richard Newsome:

You're right. That is the absolute truth. And sometimes, though, that realization takes time. And I also really believe this, that when you take a big loss like this, like I did and we all have, it forces you to learn lessons and to improve your game, I think, which-

Michael Cowen:

Yeah, I'd like to talk about a story of a big loss, something you did develop, we talked about this, develop yourself and then a big win. So you had a big loss that really bothered you.

Richard Newsome:

Oh yeah, that is the one I was talking about. So there's this case up in a very conservative jurisdiction in Florida, the Florida panhandle. And it was a 19-year-old paraplegic. And it had to do with an alleged steering defect. And I had been on a roll. I had won a lot of verdicts at that point, and I rolled in, just so cocky. And I picked the jury. I actually hired Jay Burke. Jay Burke is this famous jury consultant who

actually came up with ... What did he call it? The Cause is King method that Keith Mitnick talks about in his book, and Keith gives Jay credit. So that basically is the basic algorithm Mitnick uses, that other great lawyers, Chris Searcy, Willie Gary, Steve Yerrid ... This guy really changed the way we picked juries in Florida, affected the jurisprudence.

Richard Newsome:

And so I hired Jay on this case. I'd worked with him before. And man, it was a two-day voir dire. And I did it exactly like Jay wanted me to, but I felt disconnected from the jury at the end. And I also obviously made a lot of mistakes in picking the jury. I went against my ... Well, I just picked a bad jury. And when I lost, it was just, what did I do wrong? And it was several years that I really questioned ... I felt like something was missing in my practice that ultimately forced me to continue to learn and try to develop my voir dire to the degree where I think I now know what I did and I wouldn't have lost that case if I had to try it again.

Michael Cowen:

So what did you do to learn?

Richard Newsome:

So there's a great lawyer out of Jackson, Wyoming named Mel Orchard, who's the managing partner of The Spence Law Firm. And Mel and I had become friends through a group called the Summit Council. And Mel had done a presentation. He'd brought some of the members of his firm to a Summit Council meeting and demonstrated this tribe-building method. And the tribe-building method is a way of picking juries. It was developed by Gerry Spence, of course, who was the founder of the Trial Lawyers College, which is this amazing school, but they teach a very different method. In Florida, Jay Burke taught Cause is King, get everybody kicked off who are ... Just get the jury to basically admit that they're biased.

Richard Newsome:

And Spence's approach of tribe-building is completely the opposite. Spence says that the agenda should be to not exercise any challenges for cause, not to kick anyone off, and to have this conversation with the jury about the case and to have you participate in that community, such that at the end, you've formed a tribe and you're a part of it. And completely opposite. And so that was just really eye-opening to me. And so I went to the college. Mel convinced me to go, and I went there for three weeks. I was exposed to this method. And I was talking to a guy named Joey Low, who is one of Spence's main faculty members. And I talked to him, I said, "We do this thing in Florida. It's very different. It's called Cause is King."

Richard Newsome:

And Joey's like, "Ah, that's bullshit."

Richard Newsome:

I'm like, "No, dude. It's really not. I mean, there's some really amazing lawyers who have used this." And so I came back to Florida after I graduated from the college and learned this thing, and I was at lunch with Keith Mitnik, who is here in Orlando. Keith's a good friend. And I was telling him, I said, "Man, you're going to believe this thing they do. It's tribe-building, and they don't try to get any challenges for cause."

Richard Newsome:

Mitnik's like, "Ah, that's bullshit."

Richard Newsome:

I'm like, "Wait a minute. They can't both be bullshit, so how about we do this laboratory?"

Richard Newsome:

And so we had some of the best, some of the top guys from TLC, Trial Lawyers College, Joey came, Johnny Zelbst, Mel Orchard. We had Keith Mitnik, the great Alex Alvarez from Miami. We had Brian McClain from Morgan & Morgan. We had some other really good sort of Cause is King guys. And we mashed up focus groups over three days and we talked about method. And at the end ... There was about 30 lawyers who came from around the country. Johnny Carpenter came, with Nick Rowley's firm. Ken Suggs was there. Anyway, it was really eye-opening. And we started to talk about what we call the hybrid approach to voir dire work.

Richard Newsome:

You take some of these other methods, and then there were other methods; Jim Perdue, Jr. from Texas talks about they have a very different way. They have a scoring method that they use; some of the stuff from Lisa Blue. And so we started this conversation in this exercise, and we just started calling it Trial School sort of as a shorthand: "Now, let's do the Trial School." And then we started live streaming with each other, and then we held a big retreat where a bunch of us got together in Arizona. So this thing had been going on a while, and then COVID hits. And we thought, "Well, heck, why don't we just start to build a library?" Because what we found is that there were so many young lawyers that needed this information.

Richard Newsome:

But for me, it was an exercise that helped me understand that there are more than one ways to pick a jury. There are different methods that can complement each other. And it really, to me, solved my problem that I felt that hit me in the head in the panhandle, a way of dealing with conservative jurors to have them not hate you; to in fact build a tribe, but still with integrity and honesty, have the jurors basically admit that, "Yes, maybe this isn't the case for me." And so I think we've come to have an understanding of a better way of picking juries. We call it Mixed Method Advocacy. It's like in the octagon you have to know how to grapple, you have to know how to kick, you have to know how to strike.

Richard Newsome:

Today, I think that the best methods of picking juries utilize all these different approaches. And there's a bunch of stuff ... Kelley and Uustal developed some really powerful methods of evaluating juries through research. And so, anyway, that's my story of my personal growth. I took that loss and I really feel like I've gotten better. And I tried a case last year, several, actually ... I started picking juries for friends just for free to test some of this stuff. And I really do feel like, at least for me, I've found a better way to conduct a voir dire.

Michael Cowen:

I have two observations on that. One is just that what continually amazes me when I get to talk to people like you that are on the upper echelon of successful trial lawyers is the constant dedication to learning new things. I mean, at that point in your career just a few years ago, spending three weeks to go to the Trial Lawyers College, whereas I've talked to a lot of people that said, "Well, I already know how to do this." And the people that are at the top are constantly trying to learn new things. The other is, I think one really liberating thing is there's always ... And I felt prey to some of it when I was younger, like, "Okay, there is a way to do this, and this person is a master and a guru, and they're right on everything, and so I have to do exactly what they say. And if I lose it's because I didn't follow their method enough because they have all the answers."

Michael Cowen:

And the realization that, one, no one has all the answers. And then, two, I do have the freedom to be me, to pick and choose and find out what works for me. Because I'll be honest, when I do a pure for cause strike, I can get a bunch of people off for cause, but I feel this gap. I feel like I've created this atmosphere of I've got this really borderline case, but on a technicality I should win because more likely than not, my client was probably hurt and it was probably the defendant's fault, so you lost some money and then-

Richard Newsome:

Right, let me tell you, I get it.

Michael Cowen:

And then when I go put on this great case, I've already created this bad atmosphere, whereas when I go in and do more of a tribe-building thing, the people that are bad for me are still identifying themselves, but we're just doing it in a different way. And so I was so excited to hear what you were doing because it's what I've been ... I went to the Trial Lawyers College in '98.

Richard Newsome:

Nice.

Michael Cowen:

Yeah, I did the opposite. I had only tried three or four cases when I went, and I was having little fender benders and chiro-only cases. And Joey Low actually was still an intellectual property lawyer getting ready to leave and start doing trial work, and had gotten into the Trial Lawyers College. He was in my class. And so it's just funny you know-

Richard Newsome:

You were there at the beginning, man. That was in the early days.

Michael Cowen:

No, I was fifth year. My first boss I went to work with was in the original class. And that's actually-

Richard Newsome:

Who was that? Who was your-

Michael Cowen:

A guy named Ed Stapleton.

Richard Newsome:

Oh, I've heard of that. Sure. Yeah.

Michael Cowen:

I was at a huge firm in New York City. I was thinking about moving home mainly because the woman I'm now married to was living in Brownsville, Texas, and very conservative upbringing, was still living with her parents and was not going to go move to New York City with some guy she wasn't married to. And I was in love, but I mean, we had been dating six weeks before I moved to New York City, as stupid as that sounds.

Richard Newsome:

Jeez.

Michael Cowen:

So I was talking to some insurance defense firms and I was talking to a federal judge I knew when he recommended I talk to Ed, not even to get a job, but to get an idea of what defense firms should do to do a good in state court. And Ed just says, "Well, you should work for me for three reasons. I'll teach you how to try a case, so those fuckers don't know how to try one. I'll let you try cases and they won't, no matter what they tell you. And I'll send you to the Gerry Spence Trial Lawyers College and you can learn from Spence's work."

Richard Newsome:

Oh, man. Wow, what a gift. What a gift.

Michael Cowen:

So, it was the-

Richard Newsome:

That's like the golden trio of how to-

Michael Cowen:

Oh yeah, it was the lowest-paying job offer. It was just a little bit more than half of what I was making in New York, but it was also considerably lower than what the defense firms were offering me, although three years later I was doing much better. But it was just a-

Richard Newsome:

What a gift, though. I mean-

Michael Cowen:

It was a gift, and it was a good way to start, but then I had to be Gerry Spence. I had to do things like Gerry Spence. I had to use arguments that Gerry Spence worked. And there are things that work very well for Gerry Spence that don't work for Michael Cowen.

Richard Newsome:

Yeah, I mean, like, so I'm a mere mortal. I'm not Gerry Spence.

Michael Cowen:

Yeah, me too.

Richard Newsome:

I'm not Mark Lanier, and I'm not Keith Mitnik. I still get performance anxiety. I get eaten up with stress the night before when I'm getting ready. I'm an everyday guy. And I think one of my criticisms of traditional CLE programs, there's first of all, sort of the traditional go to the big state or national trial lawyers group, and it's whoever shows up. There's no unified curriculum or method. I mean, you have one guy that does it, and they don't sort of tie it together. The other is you go to a program like TLC, which as great as it is, as you said, is very dogmatic. It is our way or the highway. And just to me, that doesn't bear truth in my experience.

Richard Newsome:

And so that's one of the things sort of this collective of lawyers around the country started. It's like, "Let's curate method and at least present it in this MMA approach. And you may take some or all of it or none of it." But one of the things we've discovered, and this has been ... it's just un-frickin'-believable, is that as we've been going down this path, new nuggets keep popping up, like really good shit. Like last year, I went up and I had heard somebody talking about, "Yeah, Fried's trying cases faster."

Richard Newsome:

So I called Joe, I'm like, "Hey, man. What are you doing?"

Richard Newsome:

He goes, "Ah, I'm just trying to figure out how to winnow it down."

Richard Newsome:

So I went up and we did a whole program. I'm like, "Dude, this is speed trial." And we gave it a name, but it's a method of trying cases faster.

Richard Newsome:

We were doing a presentation literally two months ago with Mike Papantonio and Troy Rafferty. They do a lot of these big mass tort cases. They're like, "Yeah, and we use our theme grid."

Richard Newsome:

And I'm like, "Oh, wait. What?"

Richard Newsome:

"Yeah, we build a theme grid."

Richard Newsome:

I'm like, "What the heck is a theme grid?"

Richard Newsome:

And they're like, "This thing we came up with like five years ago that we use." And he rolls it out and it's this giant poster board laminated, with rows. And it is the most brilliant tool for deposition and cross. And so that's a new nugget. We had Kosierowski just last week talking about this idea of a foundation depo that he does. It's brand new shit. And I could go on and on and on and on and on. And to me, that's been what's great is that this has really become a laboratory that, for me, has been so stinking rewarding because it's made me better and I'm hoping it's going to make a lot of us better by sharing information.

Michael Cowen:

Sure, and it's just incredible that these people that are so successful that have developed these incredible tools for their own practice are just freely sharing them.

Richard Newsome:

Yeah. Well, and that's the idea behind Trial School. Unlike having to pay \$5,000 to go to Atlanta and hear about a method or even pay \$1,000 to go to an AAJ meeting in Vegas to learn how to take depositions and stay in the hotel room and four days on an airplane, this is all free. Trial School, we decided to make it completely not-for-profit, completely transparent. And it will always, always, always be free for every lawyer because, too, the lawyers that need it the most, the baby lawyers, the guys like you and I when we were getting started, we don't have the money to pay. And if you do, it's a sacrifice. You can't take a week out of your practice. And then if you do, you're forgetting it when you need it two months later.

Richard Newsome:

So this is a way. It's kind of like MasterClass, where you can just ring up, How to Learn to Cook with Wolfgang Puck. You can pull it up on your phone. So the idea is that we're making it easy to access, completely free, and useful in the fog of battle where you don't have time to go back and read Ball's On Damages and to read Mitnik and to read Reptile and all this stuff. You can literally get a template, a checklist, watch John Gomez give an opening for 45 minutes, and use it. Now it's better, obviously, if you use your own methods, but it's made me better, and I think it's going to help a lot of folks as a vehicle.

Michael Cowen:

And I just want to repeat that, you said it's totally free. People don't have to pay any money at all to-

Richard Newsome:

No, yeah. Yeah, that's the game changer for this. It's always, we do the live streams free. The library's free. It is and will always, always, always be free for our members. The only difference is we have a rigorous ... Again, we stole it from an AIEG idea. You'll remember that if you join AIEG, you're getting all these documents, all this great information, the secret stuff from the great, but you have to sign an NDA, non-disclosure agreement, and a joint prosecution agreement with your bar number, and sign an

affidavit saying that you only do plaintiffs' work. You do not represent any businesses or corporations, and you will, on your blood oath, not share it.

Richard Newsome:

And so, look, it's not perfect, but it's been a model that's worked for AIEG for a long time, and so we incorporated that into the Trial School. So if you're a lawyer who only represents people, you've got to get two references, you sign the affidavit, we vet you. We actually have found defense lawyers trying to sneak in, but once you're in, man, you're part of the club and it's all free until the dawn of time.

Michael Cowen:

That is so awesome. And I can only imagine the amount of not just money, but time and effort you've put into this and the money you could have made had you chosen to work on one more catastrophic case instead of doing all that. And I think we all owe you an incredible debt of gratitude.

Richard Newsome:

Well, it's been a group. There's been a group of us. It's not just me. There's Andrew Finkelstein, who's put full-time staff on it. There's Kelley and Uustal, there's John Gomez, there's Purdue, Mike Kelly, Troy; a lot of firms have chipped in on this, and it's really been a group effort.

Michael Cowen:

That's awesome. Could you give me an example, then ... You had a recent success, and I want to bring it the full circle. So you had a case that didn't go your way, a 19-year-old paraplegic. It was incredibly painful. You've had your journey of discovery where you're learning new things and really throwing yourself in to learn new things and change your approach. And now let's talk about how you applied it.

Richard Newsome:

Yeah, so it was another like that case in the panhandle 10 years ago. I had this case, it was in a really conservative jurisdiction on the West Coast of Florida; a lot of retirees, a lot of engineers, people from sort of the Midwest, very, very red Trump county. Never really any big ... We had a wrongful death case, so that was a problem. A lot of these conservative jurisdictions, they won't put big money on a wrongful death case. And we had oodles of comparative fault. We had a couple of defendants that we had made a conscious decision to settle with. It was a recalled tire. We had settled with Michelin. It was a tire that had been in for servicing and they missed the recall at Sam's Club. We had settled with Sam's Club. We were left with Ford Motor Company for a van that had a design defect that made it flip over, which is a strong theory, but a heck of a lot more tenuous than a recalled tire.

Richard Newsome:

And we were trying to blame the church for not maintaining their seat belts properly, which was another ... And blaming Ford for having a bad seat belt design that allowed it to fall through the cracks. So all these issues, I mean, a literally swirling toilet bowl of liability. And the easy thing for the defense is to blame the parties that had already checked out. So because of that, it was a tough case. I thought it was going to come down to the jury and the voir dire, and I was able to take these ... And by the way, since this Trial School thing started, I was picking juries for free sometimes for other firms, just to try to explore some of these new methods and this different way of doing things.

Richard Newsome:

And so I did it. It was a two-day voir dire. We brought in 200 jurors over in conservative Pasco County. And we got to what I thought was a fair jury at the end of that process. And after a three-and-a-half, four-week trial, we got a really great verdict. And man, it was just like, okay, all this stuff ... And there were other pieces of the trial too, because we had started with voir dire, but it became more. We were looking at demonstrative exhibits, using metaphor more strongly. Had a really powerfully used PowerPoint. We actually had the guy who wrote the book Beyond Bullet Points, Cliff Atkinson, come to our retreat last year and teach us how to reconstruct PowerPoint. But everything; you're stealing some of Mark Lanier's great ideas on his use of metaphor, the work by Dan Roam with The Back of the Napkin Academy. So anyway, it was really great. It was a rewarding experience, and I really felt, okay, I learned and grew. And it was just rewarding just on so many levels, so yeah.

Michael Cowen:

You said, "A great verdict." What is a great verdict?

Richard Newsome:

It was a \$26 million wrong ... It was the biggest verdict in that county for a wrongful death case ever, and so-

Michael Cowen:

That's a spectacular verdict.

Richard Newsome:

Yeah, and we know there was comparative fault, because the way we approached it, again, based on some of these lessons, is we owned everything. We embraced it, and we accepted responsibility for our own client, for all the other defendants. But once you do that, you take the moral ... Or at least in this case, we talked about shared responsibility. We used some metaphors. And it really stole the high ground, which I hadn't done 10 years ago. I played it a little bit differently. And I talked about comparative fault. But yeah, it was a lot of lessons that I'd learned from having failed miserably 10 years before. And now knowing, looking back, I really believe, and this is what breaks my heart, that had I been a better trial lawyer, had I known about some of the mistakes that I made, that the outcome would have been different. So that's the one case that'll haunt me forever, because I believe it was my fault. I really do. But the good news is I think at least now I'm a little more aware of some of those problems.

Michael Cowen:

Yeah. I mean, you can't beat yourself up for not knowing then what you know now, because no one else knew it either. That's the fact. I mean, this is cutting edge stuff. Can you talk about some of the metaphor ... What was the metaphor you used for shared responsibility?

Richard Newsome:

Yeah. So one of the things Dan Roam talks about, and Mike Kelly's a big proponent of, the great Mike Kelly from San Francisco, about using metaphor; we, as people, we talk in metaphors. We talk visually. And so to the degree that you can change ... We talk in Trial School, there are five spears, right? There's the self, which is the other giant gorilla in the room that you have to deal with, your fear, your anxiety. And there's easy ... not easy, but practical ways of conquering that that we usually don't talk about in

most trial advocacy programs, but there's that. There's the science, the big data, the focus groups that we can do now. It's changed everything.

Richard Newsome:

There is language, which is the traditional thing we focus on, how to say things. Keith Mitnik, the great poet, is the best on that. There is strategy, order of proof, things like that. But then there's visuals. That's sort of the fifth spear. And metaphors, to me, are part of both language and the visual component of a trial, but metaphor is the idea that we talk visually, we show them. For example, in this case, I talked about, "Look, members of the jury, we've talked about the rule that Ford Motor Company broke. We talked about the rules that the church broke. But there are other rules here, one of which is you have to wear a seat belt, one of which is that if you know you're a tire manufacturer and you make a defective tire, you have to do an effective recall," whatever those rules were. And I said, "And those are other rules that the defense is going to talk about, and that's why this is a case of shared responsibility."

Richard Newsome:

And then I put a slide up that showed ... I said, "So you've got the scales of justice," and it was a picture of the scales. Everyone's familiar with that. I said, "But this is a little bit different because there's so many parties. It's just not weighing one side or the other." And then I put up a supermarket scale with the big dial at the top where you stand on it and it has the needle. I said, "It's more like this," and I said, "You have to weigh the evidence and compare it between the various parties." And then I put up a series of five scales, five supermarket scales, and I crafted my opening and all the evidence around this idea that every single defendant and the plaintiff had to have their comparative fault weighed and compared to the other scales for the other defendants.

Richard Newsome:

And that was the metaphor that I used. There's other ones that you can use as well. That was the one I chose in that case. And then at the end I said, "And to do this weighing for each of the parties, including the plaintiff, for this shared responsibility, weighing this is a form of measurement. How do we measure? We measure in terms of time and weight. So how much evidence is there, and how long did each party have to make the decision or to take the action that they did or didn't take?" And then, of course, you're able to show that with Ford, it was decades, with Michelin, it was years, da, da, da, da, da. And of course, for the plaintiff, it was seconds.

Richard Newsome:

And so that was the metaphor that I used there, but I really think that the best metaphor artist, I think, in the country is Lanier. If you've ever watched any of his stuff, you know the one from the VIOXX trial, the first time I ever saw it, when he used all these great metaphors, telling the CSI story, for example, or the little figure that kicked the VIOXX bottle off the cliff. But those are visual methods of storytelling that if we just focus on language, I think without creating visual images with our words, but also showing visually using PowerPoint, drawing pictures, it's really a huge loss for your ability to advocate and tell your story. So that's why I used that metaphor.

Michael Cowen:

I've really found doing focus groups and practice runs that I am not as clear and understandable as I thought I was. And without visuals, people just don't get me.

Richard Newsome:

Right. Well, and one of the things I love that Lanier has done is he will take every individual witness and craft a metaphor around them; the puppet on a string, the jukebox where you have to put in money, or whatever it is. I just am so blown ... That's the thing, that's one of the reasons he's so successful in his verdicts, is he's able to cull down these complex issues into the simplicity of a metaphor.

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Michael Cowen:

And then I want to go a little bit back to your jury selection, or voir dire, in that big verdict. Can you just tell us a little bit more about what you did that was so successful in picking a good jury in a rough place to try a case?

Richard Newsome:

Yeah. So I think the Jay Burke method is basically an algorithm for getting the jury to talk about fault or to talk about, rather, their negative feelings about certain things and then give it a score, and then get them to basically be candid and honest. That's half the equation. I think that the Spence half is about being real and being candid as the attorney, and showing your case warts, talking about them honestly, talking about the weaknesses, Spence calls them danger points, and being brutally honest about the danger points. So for me, in the old days, I used this sort of algorithm. And today, I think it's more important to have a conversation and try to direct the group to talk with each other before you get into the granular. And the way I used to do it, you're just starting out with the granular and you're left, at least for me, feeling very ... Like you described in your case, you're feeling disconnected, where they know what you're doing and they're pissed off.

Richard Newsome:

And so I think that this new way is you start by having this conversation honestly, and you're just a participant part of it, and they're having the conversation with each other. And then after that's done, then you try to boil it down and combine the cause challenge algorithm afterwards.

Michael Cowen:

That's really good. I'm trying to do that myself, so I'm looking forward to ... I promised myself I'm not going to try anything new until I finish my book. And so I'm like ... You invited me to the Trial School faculty. I want to participate. I want to start taking the stuff. But I'm also never going to finish this book if I don't just-

Richard Newsome:

Tell me about the book. I didn't know-

Michael Cowen:

I've got a Trial Guides contract to write a book on trucking cases. So I, it's really-

Richard Newsome:

Fantastic.

Michael Cowen:

... how to approach, and not just what the rules are, because I could have written that in a week, but really, what I've been working on for a year and a half is I have a theory about what makes a villain and a theory about story structure, and then how do we use the rules, how do we use industry standards to show that this is a company and these are high level people, if we can find them at a company, that are immoral, that are dishonest, that are putting other people in front of themselves, that are powerful, that are intelligent; the characteristics of the villain. How do we make a trial story that's going to motivate a juror to be the hero? Following up on Carl Bettinger's Twelve Heroes, One Voice.

Richard Newsome:

When is that coming out? I want to read it.

Michael Cowen:

Well, probably late '21, early '22 by the time it comes out. But I should have-

Richard Newsome:

Okay. Well, if ever you want to come and give us an hour or two overview on the Trial School, every Friday, we have ... I'd love to hear that.

Michael Cowen:

I will, as soon as I finish the darn thing, but I've sworn to myself ... because I have a bright, shiny object syndrome. I start on one thing, and then I see something else, I start on that, and I start on that. So just for discipline things, until I finish the book, I'm not taking anything new on. I can't-

Richard Newsome:

Well, I can't wait to hear that or read it.

Michael Cowen:

Yeah, I can't wait to get more involved, too. I want to ask one more detail thing about your trial, and then I want to go a little bit into Trial School before we wrap up. I could talk to you for all day, but unfortunately, we have some time constraints in this format. You said there's some ways of conquering fear and anxiety, and that is such a common thing that I see. Tell me a little bit more about that.

Richard Newsome:

Yeah. So actually, I think this spring we're going to do a whole series on it. It is, to me, the great elephant in the room that no one wants to talk about. And there are some ... I was talking to Mitnik one time. I'm like, "Man, do you?"

Richard Newsome:

He said, "No. Hell, no. I don't get nervous." And I believe it. He doesn't. He is the consummate showman, and that's him. But I do. And I figured, well, if I do, others do.

Richard Newsome:

So I think, though, that the good news is fear and anxiety is sort of like where other mental issues were back in the 1950s. If you had depression, can't talk about it. You can't. It's not acceptable, it's not cool. It's embarrassing. And I think that's where we are trial lawyers still are with fear and anxiety. Other industries that are performance, like for example concert musicians or professional athletes or golfers, they have coaches to help with this stuff. And the good news, there are well-recognized solutions for this plague, because when you're afraid, when you have performance anxiety, you can't do your best. You can't focus on connecting, having a conversation, being real. You're just stilted at every level, and sometimes to a degree where it's debilitating, to the degree where it makes you settle a case that you shouldn't settle.

Richard Newsome:

So I think it is the biggest single thing, and if I could pick one piece of Trial School that I think is the most important that we're going to teach more of going forward, it's our big spring program, it's fear. So at a very high level, there are, I think, a few big solutions to this, and there's more. One, the simplest, is beta blockers. We had Dr. Robert Goldstein do a whole presentation on this. But a lot of the fear symptoms that we fear is because it's this fight or flight physiological thing where we get cottonmouth and we're sweating under the arm and you're just, "Holy shit." A beta blocker will make those physical symptoms drop out. And it's not addictive. It doesn't affect your performance. Basically, they use some of these for heart medicines. But Goldstein can talk about it, and I think that's the simplest cheat around it.

Richard Newsome:

The number two, most important, is batting practice, which is what I call it. If you've got to give a voir dire, practice it. Practice it with a focus group. It's the one thing that you can't rehearse in front of the mirror or by yourself. But what you learn when you start doing lots of voir dire, is that the same questions, the same issues, the same hurdles come up, and so you're not surprised, and you're not as afraid to pick a jury after you've practiced it.

Richard Newsome:

And then the third, there's some other tricks. We had Amy Cuddy, the great New York Times best-selling author, come and give a presentation. It's on the website, if any of you guys who are listening this want to hear it and you're a member. But she wrote this great book called Presence. And in Presence, she talked about the physiological connection between our brain and our body, and simple tools and tricks we can do to bring down anxiety. And these things work. It's actually based on science. We've got Chris Stombaugh, who has studied a lot of this whole ... He's the one that first told me about Amy Cuddy, and we invited her on and had her. But there's this incredible physiological thing that you can do once you think about your body, is to control your state.

Richard Newsome:

And then there's some sort of out-there tricks that we're going to include. Again, you don't have to believe it, but it works. I went up and actually took a course taught by this great hypnotist named Mike Mandel. Mandel's probably the leading hypnotist, or certainly one of them, living today. He was a student of Milton Erickson's, did a lot of work with Grindler and Bentler on neuro-linguistic

programming. Anyway, he teaches a course up in Toronto on how to become a certified hypnotist, so I went and took it, not to ... you're going to enchant the jury, because you're not. It doesn't work in the context of trying to influence other people. What you can do is steal some tools that have been around for decades on how to get your own anxiety under control, how to ... I wouldn't call it this, but self-hypnotize yourself into being in a better state, in a better place.

Richard Newsome:

So now you've got all these different tools that are available, and I think it is ... That's why when we talk about the five sort of spears of Mixed Method Advocacy, working on yourself is the most important because all of the trial lawyers who try cases are brilliant. They got through law school, they passed the bar. They're all incredibly engaging personally, but a lot of us freeze up and get scared. So our idea is, let's teach pragmatic, practical ways to deal with this that you're going to have time to do that are relatively straightforward and are going to completely change your game when you got to get up and deliver your case.

Michael Cowen:

Yeah, it's what I'm doing. I've been doing a lot of work on the self, and I have a lot of fear and anxiety when I'm getting ready to try the case, but once I start, it's gone. Let me rephrase that; in the courtroom, it's gone. Now, at night, it comes back.

Richard Newsome:

Right.

Michael Cowen:

But in the courtroom, it's gone. And it's a combination, and I'm not trying to rub it in, because I'm a Texas A&M grad, but it's a combination of Zen Buddhism and Jimbo Fisher, and so-

Richard Newsome:

Don't talk to me about Jimbo. I'm a Seminole fan.

Michael Cowen:

I'm sorry about that, and I'm not trying to rub it in. So Michael Leizerman has a Zen priest that he works with, and he's got this Zen workshop where you work on just being in the moment and just focusing on what you're doing and being 100% committed. And at the same time, I was hearing Jimbo in a press conference last night talking about you can't worry about the score, you have to worry about the person in front of you, you have to worry about making the play in front of you, blocking the person you need to block, and then the rest will take care of itself. And it's just being in the moment, doing what you have to do. So when I'm in a voir dire, I can't be thinking about, "Is this a good juror or a bad juror?" I don't take any notes. Someone else is taking notes. Now, someone else is scoring, someone else is taking notes. I just am just interested in having a conversation with this person and hearing what they have to say. It's a mindset, and you have to work real hard on that mindset.

Richard Newsome:

You do.

Michael Cowen:

But it's just, I'm thinking, "This is a good person and who wants to do what's right." Now, what they think is right might be different than what I think is right. Now, that's the issue that someone else is going to worry about when they may evaluate our conversation. But I'm going to go in there with a mindset, "This is a person who's here to do their duty, to do what they think is right, and I want to have a conversation because I'm interested in what they have to say."

Commercial 3:

Thank you to everyone who attended Cowen's Big Rig Boot Camp in August. We had an excellent virtual turnout this year, and are already thinking of how we can continue to raise that bar for next year. If you'd like to attend virtually in 2021, be sure to mark May 20th, 2021 on your calendar now and save the date. To stay updated with details as they become available, visit bigrigbootcamp.com and sign up for our mailing list. And now, back to the show.

Richard Newsome:

You have a huge advantage, though, over a lot of young lawyers. The analogy I have is a NASCAR race or a Formula One race where you're going to enter this race with professional drivers on the other side who are trying to take your ass out. They have a strategy, they've done it. You're going against Dale Earnhardt Jr. at Daytona, and you don't even know how to drive. And so you're sitting there trying to remember, "Okay, push in the clutch and pull out the gas and steer," and all this stuff, and you're just consumed with the mechanics and you're so scared, versus a Michael Cowen, who's been driving in races for decades.

Michael Cowen:

That's true.

Richard Newsome:

And you don't think about the clutch, you don't think about the gas. All you got to worry about is how you're going to cut Earnhardt's ass off, right? And so I think that one of the biggest solutions to fear is practice.

Michael Cowen:

I was about to say this exact thing.

Richard Newsome:

And we got a problem with our young lawyers because there are fewer cases going to trial, so how can you possibly get the practice? And that's where I call it batting practice for. We have this program with Trial School, it's virtual focus groups. We're really just getting it off the ground, but where you can get a panel on Zoom and practice your voir dire. And it's not the same as standing up, but it's pretty damn close.

Michael Cowen:

But I will tell you, I think that's important and I think that we should all do that before we ... And I continue to do that. I do practice runs before I try a case. We bring in people. We're not worried about representative samples and stuff anymore. We just bring in-

Richard Newsome:

Right.

Michael Cowen:

10-20 people, and I just practice talking to them, and then I leave the room and someone finds out what they thought about me, what they got, what they didn't get, what their questions were, so I can get better. But for all the lawyers who say, "Oh, you can't get a trial. You can't get a trial," are Allstate and State Farm making such great offers on these chiro-bill only cases that none of them can be tried? And is the \$500 or \$1,000 that the client's going to get in their pocket such a life-changing amount that we can't risk that money?

Michael Cowen:

I mean, if you're a young lawyer and you want to go to trial, I guarantee you there are lots of law firms out there that don't really want to spend the time to spend three days in trial where they might make 1,500 bucks in attorney's fees. Go say, "Can I try any of those cases for you?" You can try cases. It's harder right now because of COVID, but that's not going to last forever. You just have to be willing.

Michael Cowen:

And I found that out in my own firm when I used to do regular car wrecks. I'd hire people that said they wanted to try cases, but magically, all their clients wanted to settle, whereas when I had those cases, they didn't.

Richard Newsome:

It's frightening.

Michael Cowen:

It is.

Richard Newsome:

It's a scary thing. So not only is it scary, but it's an ass load of work.

Michael Cowen:

It is.

Richard Newsome:

And so, "Wait a minute. There's a scary, really hard thing that I'm going to have to do, or I can just take the offer and talk my client into it," right? How many times have you heard, "Well, the client made me settle. The client wanted to settle"? So I-

Michael Cowen:

And then you talk to the client, yeah.

Richard Newsome:

Right.

Michael Cowen:

I mean, if you want to be a trial lawyer, then get in there and get your scars and get bloodied up and go try some cases, and it's honestly, it's only by going in there and do it on the smaller cases where it's not life-changing to your client whether you win or lose. And go in there, and when you lose a couple times and you survive, that's how you get-

Richard Newsome:

That's right.

Michael Cowen:

... to manage the fear. And you don't get over it, but it becomes manageable because you learn it's not that bad. You're not going to die. Your client's not going to die.

Richard Newsome:

And so most of the content in Trial School has now become ... It's all online. But it's designed to help alleviate the fear also by knowing the best way to do it. I think probably one of the most used pieces of paper in trial lawyer history is that one page in David Ball Damages where he gives the opening statement template, right?

Michael Cowen:

Yeah.

Richard Newsome:

So many people use that because it's easy, it's in the heat of battle; well, I call it the fog of war, right? You know what it is, that weekend before. You should have prepared three months ago but you didn't. Now it's jammed, and you can't do everything. And now you're scared to death and you don't remember how the seminar said to do it, or the AAJ. So we're boiling this stuff down. And look, is it perfect? No, but it's best practices, best ways to do it from some of the best guys around the country. And there's a certain solace in being able to watch somebody like Bob Simon give a closing. You can watch it in 45 minutes, craft your closing off of that, and feel like you're doing a pretty good job. And then hopefully, you've practiced with some focus groups or virtually through the Trial School thing, and now you've got a little practice under your belt and you've now got a little more confidence and a little less fear.

Michael Cowen:

And even David Ball. I mean, I'm working with David on a case right now, and I was talking to him last week, and he says that ... He's doing some work with Nick Rowley, and he's learning from Nick. He's learning from other people and opening his mind. And David's a lot less dogmatic than people say he is, when you get to know him.

Richard Newsome:

Well, that's good to hear.

Michael Cowen:

I think he was getting more dogmatic with the Reptile thing. I think since he and Keenan have split off, I think he's become a little less-

Richard Newsome:

No, I loved ... Look, his book is required reading at my firm, but I've heard ... I mean, David, if you're listening to this, my apologies, but I have heard, "This is the only way to do it. This is how. People don't know," and I just disagree with that. I think there are multiple ways of doing things. And I know we've learned nuggets and best practices that, candidly, I think have moved the state of the art beyond where things were even five years ago.

Michael Cowen:

Well, with all respect, I don't want to criticize anyone in particular, but there's a marketing message of, "You have to come to me and you have to keep giving me your money"-

Richard Newsome:

Of course.

Michael Cowen:

... which honestly, a lot of lawyers, not just consultants do. And then there's what you're doing, which is, "I want to get better. I want to share what I learned, and I'm not asking for a dime for it." And I think that's really not only admirable but that's how we're going to get to the truth because as long as there is that, "No one else can really know all the secrets because they either need to keep paying me money because only I know, or they need to refer the cases to me because only I know." It's hard to get everything full development. I think what you're doing, which is, "Here's what I know. I want to learn what you know. Let's share the best from everybody and try to make everyone better," it's just incredible, and it's just such an incredible time to be a plaintiffs' lawyer.

Richard Newsome:

Well, I agree. And what's great, too, is because it's free, you have these amazing ... Guys like Carl Douglas who are like, "Hey, man, I'm all about this because it's free." I talked to ... Gosh, you name it. Because Trial School is completely free, I think we're having the doors opened on a lot of really secret sauce methodology that I think is changing the game. I really do.

Michael Cowen:

And the universe blesses you when you ... I mean, like this podcast. I don't charge any money for it, and I'm not doing it directly to get cases. I mean, I'm not specifically ... And I'll be perfectly happy if someone sends a case over-

Richard Newsome:

Of course.

Michael Cowen:

... but it's not a pure marketing thing.

Richard Newsome:

Right.

Michael Cowen:

We're doing fine.

Richard Newsome:

Of course.

Michael Cowen:

We do our Boot Camp CLE, all kinds of stuff. And we do that for free, but we're doing fine. When you share, it all comes back.

Richard Newsome:

It all comes back.

Michael Cowen:

And we'll have a link in the show notes, but for those people who want to check out Trial School, get involved, what do they need to do?

Richard Newsome:

So, if you are a plaintiff lawyer who only represents human beings and want to join, it's completely free. Visit trialschool.org. You need two references. And just if you have friends or associates or whomever, you need two plaintiff lawyers to recommend you. Just fill out the application. We will then vet you and hopefully within a day or two, you'll get your free membership, and then you've got access to not only all of the live stream events, but the entire body of work that we have from all these great lawyers around the country that are on the Trial School website. And it's easy. It's set up on a platform called Ustream. You can pull it up on your phone, on your TV the night before when you're getting ready for your opening statement, and it's all right there in an easy-to-use format. So please join. Visit trialschool.org and just put in an application.

Michael Cowen:

And it's incredible stuff. I'm on there. And I really appreciate what you're doing. And Rich, I wish you every success going forward. Thank you so much for doing this today.

Richard Newsome:

Well, thanks for having me, and I really look forward to seeing your book, man. And once you come up for air after it's finished, we'd love for you to share it with our-

Michael Cowen:

Absolutely. I will get more involved once I get that done, but I know that I'll get so into Trial School, then I won't ever finish the book, so.

Richard Newsome:

All right, my friend. Well, thanks for having me. It's really been fun.

Outro:

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, insider information and more from Trial Lawyer Nation, sign up for our mailing list at triallawyernation.com. You could also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find our podcast, please like, share and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive, plaintiff lawyer-only content and live monthly discussions with me, send a request to join the Trial Lawyer Nation Insider Circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

Commercial 4:

Each year, the law firm of Cowen | Rodriguez | Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case. And if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301, or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail.

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